

Text of proposed amendments to Sections 968.44 and 968.46

§ 968.44 - Testing Procedures

(a) The only persons allowed to conduct handgun testing are authorized staff of the DOJ-Certified Laboratory. In addition to this staff, representatives of the manufacturer/importer and/or the DOJ shall be allowed to be present during testing. Any such representative(s) shall not participate in the testing. However, if deemed necessary by the staff of the DOJ-Certified Laboratory, representative(s) of the manufacturer/importer may be asked to provide advice and/or guidance regarding the characteristics, handling, and/or operation of the handgun.

(b) Prior to beginning the required testing the DOJ-Certified Laboratory shall determine whether the safety device described in Penal Code § 12126(a)(1) or (b)(1) is present.

(1) If the DOJ-Certified Laboratory needs guidance in making this determination, the information required by subdivision (d) of § 968.43 of these regulations should be consulted. If the DOJ-Certified Laboratory is still not able to make this determination, they should contact the manufacturer/importer for additional information. Any additional information received from the manufacturer/importer shall be included with the information submitted pursuant to subdivision (d) of § 968.43 of these regulations.

(2) If a DOJ-Certified Laboratory is still uncertain whether a positive manually operated safety device is present on a pistol even after it receives additional information, the firing and drop tests should be performed. If the pistol passes these tests, the laboratory should submit the pistol to the DOJ with a letter explaining the steps taken to determine whether the positive manually operated safety device is present. The laboratory must indicate its preliminary decision regarding the positive manually operated safety device. The letter should also include any information that would support the position taken by the laboratory. This includes a description of the positive manually operated safety device(s) incorporated into the pistol's design and an explanation of how this design replicates the positive manually operated safety device of a pistol design that has already been determined to meet the standards promulgated by the BATF. The DOJ will use this information to determine whether the pistol can be sold in California.

(c)(1) Commencing January 1, 2006, the DOJ-Certified Laboratory may conduct the required testing of a center-fire semiautomatic pistol only after ascertaining the firearm has a functioning chamber load indicator or a functioning magazine disconnect mechanism.

(2) Commencing January 1, 2007, the DOJ-Certified Laboratory may conduct the required testing of a center-fire semiautomatic pistol which accepts a detachable magazine only after ascertaining the firearm has both a functioning chamber load indicator and a functioning magazine disconnect

mechanism.

(3) Commencing January 1, 2006, the DOJ-Certified Laboratory may conduct the required testing of a rim-fire semiautomatic pistol which accepts a detachable magazine only after ascertaining the firearm has a functioning magazine disconnect mechanism.

(d) (1) A functioning chamber load indicator must meet all of the following conditions:

(A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is permanently displayed on the firearm and is readable by a person of normal visual acuity.

(B) The chamber load indicator is of a distinct color contrast to that of the firearm.

(C) Only when there is a round in the chamber, the "loaded" indication is visible on the top or either side of the firearm to a person of normal visual acuity from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

(D) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol that a round is in the chamber.

(2) A functioning magazine disconnect mechanism must prevent the ammunition primer from being struck with a pull of the trigger or attempted pull of the trigger whenever a detachable magazine is not inserted in the pistol.

~~(c)~~(e) The "firing requirement for handguns" is the first test to be undertaken by the DOJ-Certified Laboratory. The firing test shall be conducted in the manner prescribed in Penal Code § 12127 and in accordance with the following:

(1) For the purposes of determining whether a handgun passes the "firing requirement for handguns," "malfunction" includes any failure to operate as designed including the failure of a pistol's slide to remain open after a manufacturer-approved magazine has been expended, provided that the handgun was designed by the manufacturer to remain open.

(2) If the manufacturer/importer markets and/or recommends that the handgun model is designed to handle multiple cartridges, the standard ammunition used during the firing test shall be the more powerful marketed/recommended cartridge. However, the DOJ-Certified Laboratory shall not use any standard ammunition known to be beyond the design limits of the handgun and/or known not to function in the handgun.

(3) If a pistol has multiple chambers the 600 rounds shall be evenly apportioned between the chambers.

(4) The DOJ-Certified Laboratory shall determine whether there is any crack or breakage of an operating part of the handgun that increases the risk of injury to the user, as set forth in subdivision (a)(2) of Penal Code § 12127.

~~(d)~~(f) The "drop safety requirement for handguns" is the last test to be undertaken by the DOJ-Certified Laboratory. The drop tests shall be conducted in the manner prescribed in Penal Code § 12128 and in accordance with the following:

(1) The drop height of 1m + 1cm - 0cm (39.4 in. + 0.4 in. - 0 in.) shall be measured from the lowermost portion of the handgun as situated in the drop fixture to the top surface of the required concrete slab. The required concrete slab shall rest upon a firm surface and the face of the slab shall be perpendicular to the direction of the drop. If a handgun has an exposed hammer, the hammer shall be fully cocked during each drop test. When dropped the handgun shall initially strike the face of the required concrete slab and then come to rest without interference.

(2) The primed cases used during the drop test shall be produced by the ammunition manufacturer of and made from the same cases and primers as the standard ammunition that is used during the firing test as set forth in §§ 968.43(e) and ~~968.44(e)(2)~~ 968.44(e)(2) of these regulations.

(3) If a pistol has multiple chambers and/or firing pins, the tests shall be conducted as follows. For each of the drop tests a primed case will be placed in each chamber. If the hammer or firing pin alternates between chambers, the pistol will be dropped once for each hammer or firing pin position.

(4) Minimal damage, such as broken grips or sights, can and will occur during the course of the drop testing. Damage and/or breakage that affects the overall dimensions of the handgun shall be repaired prior to continuing the drop tests. After each of the first five drop tests the DOJ-Certified Laboratory shall determine whether the handgun has been rendered incapable of firing a primed case prior to conducting the next drop test. If so, the handgun model shall either be repaired so that it is capable of firing a primed case, or a new handgun of the same model can be substituted for the handgun which is not capable of firing a primed case. It is not necessary to repeat any drop test(s) for which the handgun was initially capable of firing a primed case.

(5) After examining the primed case(s) for indentations after each drop test, each primed case shall be fired to determine whether the primer was functional. If not, the drop test shall be repeated with a new primed case(s). A new primed case(s) will be used for the next drop test.

~~(e)~~(g) A DOJ representative may request and shall be provided with spent or unspent rounds of and/or the packaging for the standard ammunition that is being used for firing tests. A DOJ representative may also request and shall be provided with the packaging for and/or used or unused primed cases that are being used for drop tests.

(h) The DOJ-Certified Laboratory may report a handgun to the DOJ as “not unsafe” only if it has passed the required testing and the lab has confirmed that any chamber load indicator and/or magazine disconnect identified pursuant to subdivisions (c) and (d) of § 968.44 of these regulations continues to function upon completion of the required testing.

Authority cited: Sections 12126, 12127, 12128, 12130 Penal Code.

Reference: Sections 12125 - 12131.5 Penal Code.

§ 968.46 - Required Records, Retention Periods, Reporting Changes

(a) The DOJ-Certified Laboratory shall for a minimum of five (5) years from the date of the Compliance Test Report maintain sufficient records to support the results of any and all such reports. The information required to be recorded, reported, and maintained is:

(1) The name and address of the DOJ-Certified Laboratory that conducted the test and the name of the person who should be contacted if there are any questions regarding the testing and/or the report.

(2) The name and address of the manufacturer/importer which submitted the handgun model for testing. If the DOJ submitted the model, this shall be noted in the records.

(3) Date, time, and location of the testing. This includes any off-site equipment and/or facilities that are used during any portion of the testing.

(4) A unique reference number/identifier issued by the DOJ-Certified Laboratory for the testing.

(5) The type (pistol or revolver), make, model, caliber, barrel length, construction material, and serial numbers of all handguns that were tested. This includes "replacement" handguns as allowed by subdivision (b) of Penal Code §12127 and subdivision ~~(d)(4)~~ (f)(4) of § 968.44 of these regulations. The serial number of the handgun which was submitted to the DOJ shall also be identified.

(6) The manufacturer, cartridge, caliber, bullet weight and type, and the lot number of the standard ammunition that was used during the firing test.

(7) The manufacturer of the case and primer for the primed cases that were used during the drop test.

(8) Whether the required safety device was present or any information supporting the preliminary determination regarding the required safety device.

(9) Statement confirming the presence of any chamber load indicator and/or magazine disconnect required pursuant to subdivisions (b), (c), and (d) of Penal Code § 12126 and subdivisions (c), (d) and (h) of § 968.44 of these regulations.

~~(9)~~(10) The results of each phase of the following required testing: the initial 20 rounds; the entire 600 rounds; the normal firing position, barrel horizontal drop; the upside down, barrel horizontal drop; the on grip, barrel vertical drop; the on muzzle, barrel vertical drop; the on either side, barrel horizontal drop; and the exposed hammer/rear most point of the device or handgun drop.

~~(10)~~(11) The date the Compliance Test Report was submitted to the DOJ.

~~(11)~~(12) A certification signed under penalty of perjury that standard ammunition was used during the firing test and that, if applicable, it was the more powerful cartridge marketed/recommended by the manufacturer/importer.

Authority cited: Sections 12126, 12129, 12130 Penal Code.

Reference: Sections 12001.6, 12021, 12125 - 12131.5 Penal Code.